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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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STEVEN WAYNE FELDMANN,

Plaintiff,

v.

STATE OF WISCONSIN,

Defendant.

Case No. 2:14-cv-00267-GMN-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

(IFP App. - Dkt. #1)

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13 Plaintiff Steven Wayne Feldmann is proceeding in this action pro se. Plaintiff has
14 requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis, and he submitted
15 a complaint. This matter was referred to the undersigned pursuant to the provisions of 28 U.S.C.
16 § 636(b)(1)(A) and (B) and Local Rule IB 1-3 and 1-4.

17 **I. In Forma Pauperis Application.**

18 Feldmann has submitted the affidavit required by § 1915(a) showing that he is unable to
19 prepay fees and costs or give security for them. Accordingly, his request to proceed in forma
20 pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's
21 complaint.

22 **II. Screening the Complaint.**

23 Upon granting a request to proceed in forma pauperis, a court must additionally screen a
24 complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the
25 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
26 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
27 § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given
28 leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from

1 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
 2 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
 4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
 5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
 6 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
 7 plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2);
 8 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require
 9 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic
 10 recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
 11 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled
 12 factual allegations contained in the complaint, but the same requirement does not apply to legal
 13 conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of action,
 14 supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where the
 15 claims in the complaint have not crossed the line from plausible to conceivable, the complaint
 16 should be dismissed. *Twombly*, 550 U.S. at 570.

17 Plaintiff’s “complaint” names the state of Wisconsin as the only Defendant. His
 18 “Additional Feedback” filing (Dkt. #2) lists the States of Texas and California as Defendants.
 19 His pleading is a one-page handwritten document with twenty-seven pages of attachments. He
 20 cites “improper venue” as the basis for the court’s jurisdiction, states that his complaint is for
 21 “identity theft,” and his demand is for the court to “handle matters accordingly please.”
 22 Complaint at 1. The attachments to his complaint consist of: public record request forms and a
 23 citizen complaint from Azusa, California; Plaintiff’s arrest records from the Superior Court of
 24 California, County of San Bernardino; a civil docket sheet for the closed case of *Feldmann v.*
 25 *Wisconsin* 3:13-cv-00154; a copy of Plaintiff’s divorce certificate; and six hand-written “pre-
 26 appointed motions” citing “improper venue, production, mail fraud, and identity theft,” with no
 27 further details. The attachments do not make any allegations against the Defendant whatsoever
 28 or set forth a factual basis for any cognizable claim. On the civil cover sheet, Plaintiff classified

1 the nature of this suit as “other contract” and the cause of action as pursuant to 28 U.S.C. § 1441,
2 a federal removal statute, which allows cases to be removed from state court to federal court.
3 Plaintiff’s filing does not set forth a cause of action or state a basis for the court’s jurisdiction. In
4 short, the complaint and its attachments do not state a federal claim or a basis for federal
5 jurisdiction.

6 Additionally, the Eleventh Amendment bars an individual from suing a state in federal
7 court unless the state consents to suit, or Congress has clearly and validly abrogated the state’s
8 sovereign immunity. *See U.S. CONST. amend. XI; see also, e.g., Coll. Sav. Bank v. Fla. Prepaid
Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). Plaintiff has not alleged
9 Wisconsin has consented to be sued or that Congress has abrogated Wisconsin’s sovereign
10 immunity. Therefore, Plaintiff’s complaint against the state of Wisconsin must be dismissed.
11 Leave to amend will not be granted in this case because Plaintiff’s claims cannot be cured by the
12 allegation of additional facts. *See Lopez v. Smith*, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en
13 banc) (citing *Doe v. United States*, 58 F. 3d 494, 497 (9th Cir. 1995) (leave to amend should be
14 granted unless amendment would be futile)). Accordingly,

16 **IT IS ORDERED:**

- 17 1. Plaintiff’s request to proceed in forma pauperis is **GRANTED**. Plaintiff shall not be
18 required to pay the filing fee of four hundred dollars.
- 19 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of
20 prepayment of any additional fees or costs or the giving of a security. This Order
21 granting leave to proceed in forma pauperis shall not extend to the issuance of
22 subpoenas at government expense.
- 23 3. The Clerk of Court shall file the complaint.

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1 **IT IS RECOMMENDED** that Plaintiff's complaint be **DISMISSED** for failure to state
2 a claim upon which relief can be granted.

3 Dated this 2nd day of June, 2014.

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6 PEGGY A. SEIDEN
7 UNITED STATES MAGISTRATE JUDGE

8 **NOTICE**

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing
13 to object to the findings and recommendations of a magistrate judge shall file and serve *specific*
14 *written objections* together with points and authorities in support of those objections, within
15 fourteen days of the date of service of the findings and recommendations. The document should
16 be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties
17 are advised that failure to file objections within the specified time may waive the right to appeal
18 the District Court's Order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and
19 authorities filed in support of the specific written objections are subject to the page limitations
20 found in LR 7-4.

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